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NASA Procedural Requirements

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(NASA Only)

Subject: NASA Pay and Compensation Policy

Responsible Office: Office of Human Capital Management

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Chapter 15. Retention Bonuses — NASA Flexibility Act of 2004

15.1 References

5 U.S.C. § 3132, Definitions and Exclusions.

5 U.S.C. § 5304, Locality-based Comparability System.

5 U.S.C. § 5753, Recruitment and Relocation Bonuses.

5 U.S.C. § 5754, Retention Bonuses.

5 U.S.C. § 7103, Definitions.

5 U.S.C. § 9804, Recruitment, Redesignation, and Relocation Bonuses.

42 U.S.C. § 2473, Functions of Administration.

5 CFR Part 752, Adverse Actions.

5 CFR § 530.202, Definitions.

Federal Workforce Flexibility Act of 2004.

NPD 3000.1, Management of Human Resources.

NASA Desk Guide on The NASA Flexibility Act of 2004, NASA Office of Human Capital

Management.

15.2 Purpose

This chapter establishes the procedural requirements for implementing and applying the provisions pertaining to retention bonuses in the NASA Flexibility Act of 2004.

15.3 Authority

5 U.S.C. Part III, Subpart I, Chapter 98, National Aeronautics and Space Administration

15.4 Responsibilities

15.4.1 The AA, OHCM has overall responsibility for ensuring Agency compliance with the statutory requirements governing retention bonuses, including preparation of the annual report to Congress on NASA's use of these bonuses.

15.4.2 The Human Resources Officer at each NASA Center is responsible for:

- a. Implementing the retention bonus authority in accordance with this NPR and applicable statutory requirements.
- b. Ensuring that no more than 25 percent of the total amount of the retention bonuses in any fiscal year are paid to supervisory and management officials.
- c. Providing the Office of Human Capital Management with the information required for the annual report on retention bonuses.

15.5 Definitions

15.5.1 Retention Bonus — Paid to a current NASA employee as an incentive to remain in his or her position. This includes individuals leaving to accept positions outside the Federal Government or in another Federal agency.

15.5.2 Critical Need — Competency area in which the Agency is or will be at risk, as set forth by the AA, OHCM.

15.5.3 Supervisor — An individual having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment. Supervisory duties need not require a significant amount of time, nor require a supervisory designation in the position title. (Definition stems from 5 U.S.C. § 7103, Definitions; Application, Subsection (a)(10).)

15.5.4 Management Official — An individual employed in a position that requires or authorizes the individual to formulate, determine, or influence Agency policies. (Definition stems from 5 U.S.C. § 7103, Definitions; Application, Subsection (a)(11).)

15.5.5 Involuntarily Separated — refers to a separation initiated by the Agency against the employee's will and without his or her consent for reasons other than cause on charges of misconduct or delinquency. An involuntary separation includes a separation resulting from the employee's actual inability to do the work following genuine efforts to do so, but does not include a separation under 5 CFR Part 752, Adverse Actions, or an

equivalent procedure for reasons that involve culpable wrongdoing on the part of the employee. In addition, when an employee is separated because he or she declines to accept reassignment outside his or her commuting area, the separation is involuntary if the employee's position description or other written agreement does not provide for such reassignment. However, an employee's separation is not involuntary if, after such a written mobility agreement is added, the employee accepts one reassignment outside his or her commuting area, but subsequently declines another such reassignment.

15.6 Covered Employees

Except as indicated below, a retention bonus may be paid to a current employee who is occupying a: GS, SES, EX, SL, ST, LEO, or FWS position. A retention bonus may also be paid to an eligible employee whose pay is administratively determined (AD pay plan) under 42 U.S.C. § 2473, Functions of Administration, Subsection (c) (i.e., NEX employee).

15.7 Exclusions

A bonus may not be paid to an employee in a position: to which an individual is appointed by the President by and with the advice and consent of the Senate; to which an individual is appointed by the President without the advice and consent of the Senate; in the SES as a noncareer appointee as defined in 5 U.S.C. § 3132, Definitions and Exclusions, Subsection (a)(7); or excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character ("Schedule C position").

15.8 Bonus Approval Levels

15.8.1 For SES, ST, SL, and NEX positions:

- a. The Administrator has delegated authority to approve bonuses to the Associate Administrator for Institutions and Management.
- b. The Administrator is authorized to approve requests to waive bonus repayments for employees who fail to fulfill their service agreements.

15.8.2 For All Other Positions:

- a. Center Directors are authorized to approve bonuses. Approval authority may be delegated in accordance with NPD 3000.1, Management of Human Resources. The approving official must be at a higher level than the individual recommending the bonus, except the Administrator who may both recommend and approve bonuses.
- b. Center Directors are authorized to approve requests to waive bonus repayments for employees who fail to fulfill their service agreements. This authority may not be delegated. In cases in which the bonus is approved at a level higher than the Center Director, authority to waive bonus repayments rests with the Associate Administrator for Institutions and Management.

15.9 General Requirements

15.9.1 Retention bonuses are to be used when the employee is likely to leave the

Agency, and it is essential to retain an employee's services because of his/her unusually high or unique qualifications, or because of a special Agency need.

15.9.2 An employee may not receive a retention bonus for any period of service for which he or she received/is receiving a recruitment, redesignation, or relocation bonus under either 5 U.S.C. § 9804, Recruitment, Redesignation, and Relocation Bonuses, or 5 U.S.C. § 5753, Recruitment and Relocation Bonuses.

15.9.3 Retention bonuses are to be offered in accordance with merit principles and must be in amounts and under terms commensurate with the needs of the Agency.

15.9.4 Approval must be based on written documentation that addresses the requisite criteria. The documentation must specifically identify whether or not the individual occupies a position supporting a competency designated as a critical need, as identified in the Act.

15.9.5 Unless the employee is paid the full percentage of the bonus in biweekly installments, the bonus may only be paid after the employee signs a service agreement. If the employee is to be paid the full percentage of the bonus in biweekly installments, he/she must sign a statement of understanding explaining the conditions under which the incentive will be paid and under which it may be terminated.

15.9.6 Retention bonuses not requiring a service agreement are subject to annual review and recertification. The approving official must certify that the employee/position continues to meet the criteria for payment of the bonus in order for payment to continue. Such retention bonuses may be reduced or terminated at any time.

15.9.7 The authority to pay retention bonuses under this authority is separate and distinct from the authority to pay retention incentives under the Federal Workforce Flexibility the Act of 2004, as codified in 5 U.S.C. § 5754, Retention Bonuses.

15.10 Limitation on Bonuses for Supervisors and Management Officials

15.10.1 Not more than 25 percent of the retention bonus money paid in any fiscal year under these provisions may be paid to employees occupying positions designated as supervisors or management officials.

15.10.2 Each Center Human Resources Office must track retention bonuses paid to supervisors and management officials under these provisions to ensure that the total fiscal year projected bonus payout amount for the Center will not exceed 25percent.

15.10.3 Only monies actually paid during the fiscal year is used in the calculation. For any employee who receives payment in installments, only that portion of the installment paid in the fiscal year is counted.

15.11 Determining Basic Eligibility

15.11.1 The Center must use the basic eligibility criteria outlined in the Basic Eligibility Criteria matrix and paragraphs 15.10.2 - to determine if a bonus is warranted. If the situation does not meet the minimum requirements identified below, a bonus will not be approved.

BASIC ELIGIBILITY CRITERIA Retention Bonuses		
Criteria	Definition	Elements
1. Likelihood of Employee Loss	Extent to which the employee is likely to leave the Agency	The employee has expressed a specific intention of leaving the Agency
2. Program Impact	Extent to which the employee's departure affects Agency projects or programs	<p>(a) The employee has extensive subject matter expertise and experience in a project or program area</p> <hr/> <p>(b) The employee serves as a key mentor and knowledge base for less experienced employees within the organization</p>
3. Degree of Difficulty in Replacement	Extent to which quality candidates possessing the required skills and experience are available in the labor force	<p>(a) Recent recruitment efforts for comparable positions in the same geographic area demonstrate that it is difficult to find well-qualified candidates</p> <hr/> <p>(b) Positions requiring the skills are often vacant, and fill times are prolonged</p> <hr/> <p>(c) Positions requiring the skills typically have a high turnover rate</p> <hr/> <p>(d) Labor market trends demonstrate that the</p>

		<p>Agency is likely to experience difficulty in finding well-qualified candidates now and/or in the future</p> <hr/> <p>(e) Candidates offered positions requiring these skills frequently decline the job offer</p> <hr/> <p>(f) Position is in a new or emerging technical area where there is limited recruitment history</p>
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15.11.2 All cases must meet Criterion 1 and meet either Criterion 2 or Criterion 3.

a. Criterion 1, Likelihood of Employee Loss: In order for the Agency to offer a retention bonus, there must be a likelihood that the employee would leave the Agency in the absence of a bonus.

b. Criterion 2, Program Impact: Situations meeting this criterion must meet at least one of the two elements.

c. Criterion 3, Degree of Difficulty in Replacement:

(i). Situations meeting this criterion must be supported by evidence that, should the employee leave, the Agency would find it difficult to replace him or her with someone of equal caliber.

(ii). The position must meet either at least two of elements (a) through (e) or element (f).

(iii). If the position does not meet at least two of the elements identified in Criterion 3, but presents issues of equivalent difficulty in the replacement process, they may be used in lieu of elements (a) through (e) in justifying payment of a bonus.

d. Each case file must include documentation explaining and supporting the basis of payment eligibility. When a position is described as having a prolonged fill time or a high turnover rate, the justification must include information supporting that determination in the context of the specific type of work involved.

15.12 Determining the Bonus Amount

15.12.1 When there is a positive determination of bonus eligibility, a determination of the appropriate bonus amount must be made and documented.

15.12.2 Bonus Maximums:

a. Individuals in positions requiring competencies, which are set forth by the AA, OHCM,

that meet a **critical need** are eligible for a bonus of not more than 50 percent of their annual rate of basic pay (including locality-based comparability payments authorized under 5 U.S.C. § 5304, Locality-based Comparability System. For individuals paid retention bonuses in other than biweekly installments, the total retention bonus payments paid under a single one-year (or longer) service agreement may not exceed 50 percent of the employee's annual rate of basic pay (including locality-based comparability payments) at the beginning of the service period. However, if the service agreement is for a period of less than one year, the total retention bonus payments paid would be a prorated share of the maximum amount allowed under a single one-year service agreement. For employees paid retention bonuses in biweekly installments, each biweekly retention bonus payment may not exceed 50 percent of the employee's biweekly rate of basic pay (including locality-based comparability payments) in effect when the biweekly retention bonus payment is made.

b. Individuals in positions not requiring competencies defined as meeting a critical need are eligible for a bonus of up to 25 percent of the employee's annual rate of basic pay (excluding comparability payments authorized under 5 U.S.C. § 5304, Locality based Comparability System.

For employees paid retention bonuses in other than biweekly installments, the total retention bonus payments paid under a single one-year (or longer) service agreement may not exceed 25 percent of the employee's annual rate of basic pay (excluding locality-based comparability payments) in effect at the beginning of the service period. However, if the service agreement is for a period of less than one year, the total retention bonus payments paid would be a prorated share of the maximum amount allowed under a single one-year service agreement. For employees paid retention bonuses in biweekly installments, each biweekly retention bonus payment may not exceed 25 percent of the employee's biweekly rate of basic pay (excluding locality-based comparability payments) in effect when the biweekly retention bonus payment is made.

15.12.3 General Principles:

a. There is no entitlement, either implied or explicit, for an employee to receive the maximum bonus allowable under the law.

b. Even when the evaluation criteria may support payment of a high bonus, the organization will pay a smaller bonus if such an amount is sufficient to persuade the employee to stay, or if budget or other appropriate concerns so dictate.

15.12.4 The following matrix must be used to determine the maximum bonus amount.

BONUS AMOUNT CRITERIA Retention Bonuses		
Criteria	Definition	Elements
1. Impact of Market Forces	Extent to which an employee is likely to remain in his or her position	(a) The employee provides evidence of a higher competing offer of Federal or non-Federal employment

		(b) Salaries in the employee's field are higher than those of comparable Federal or non-Federal positions at the location where the employee works, as demonstrated by salary surveys or other objective evidence
2. Individual Attributes	Extent to which the employee possesses skills and competencies of an exceptionally high or unique nature	<p>(a) Employee possesses skills or perspectives that are unique in the workforce</p> <hr/> <p>(b) Employee has contributed to the expansion of the body of knowledge in the professional field as demonstrated by research publications and/or leadership on professional panels, committees, and/or professional and honorary societies</p> <hr/> <p>(c) Employee's professional contributions have been formally recognized by performance awards; and/or awards, citations, or commendations from professional groups</p>

a. Using the Matrix: Criteria in the matrix provide key representative examples of elements that may be used to establish the bonus amount. They are not all-inclusive. Other issues of commensurate significance may be used, when documented, to determine the bonus amount.

b. Candidates Meeting Only Basic Eligibility: If a candidate meets basic eligibility, but does not meet any of the criteria in the matrix above (or other comparable elements), he/she will be paid a bonus that does not exceed one-third of the maximum percentage allowable. In this case, a bonus paid to a candidate for a critical need position must not exceed approximately 17 percent (out of a maximum 50 percent) of basic pay. A bonus

paid to a candidate for a position not meeting a critical need must not exceed approximately 8 percent (out of a maximum 25 percent) of basic pay.

c. Criterion 1, Impact of Market Forces: Candidates who meet one or both of these or comparable elements may be offered a bonus high enough to be competitive with the individual's other alternative(s) and to create an incentive to remain in the NASA position.

d. Criterion 2, Individual Attributes

(i). Candidates who meet Criterion 1, but who also possess skills and knowledge that substantially enhances NASA's capabilities and reputation by meeting one or more of the elements in Criterion 2 or equivalent elements, may be paid a bonus up to the maximum amount allowable.

(ii). Candidates who do not meet Criterion 1, but who demonstrate a high level of professional achievement, comparable to the elements outlined in Criterion 2, may be paid bonuses higher than the minimum described in item b of this paragraph. The 15.11.4.b documentation must demonstrate a level of accomplishment sufficient to justify the percentage being offered.

15.12.5. All bonus amount determinations beyond the minimum must be supported by documentation of the circumstances warranting the higher level payment.

15.13. Payment Schedule

15.13.1 Retention bonuses are not considered part of an employee's rate of basic pay for any purpose.

15.13.2. Bonuses paid under these provisions are subject to the aggregate limitation on pay as described in 5 CFR Part 530, Pay Rates and Systems (General), Subpart B, Aggregate Limitation on Pay. They constitute "other similar payments" under the definition of "aggregate compensation" in 5 CFR § 530.202, Definitions.

15.13.3. Bonuses may be paid as an initial lump-sum payment, in equal installments at the end of specified periods throughout the service period (e.g., biweekly, monthly, quarterly, etc.), in variable payments at the end of specified periods, as a final lump-sum payment, or in a combination of payment methods. The final decision on the payment method rests with management, although employee preferences should be given strong consideration to the maximum extent practicable.

15.13.4. Determining the Rate to be Used in Paying the Bonus:

a. When the employee elects to take the bonus as a payment of the full percentage in biweekly installments, the bonus installment will be calculated as a percentage of the annual rate of pay in effect at the time payment is made.

b. When the employee elects to take the bonus in other than biweekly installments, the total bonus amount paid must be calculated based on a percentage of the annual rate of pay in effect at the time the service agreement is signed.

15.14 Payment of a Bonus with No Service Agreement

15.14.1 When a retention bonus is paid biweekly at the full percentage rate, no service

agreement is required. However, the employee must sign a statement of understanding explaining the conditions under which the incentive will be paid and the conditions under which it may be terminated. NASA Form 1715, Statement of Understanding — Retention Bonus/Allowance, has been created for this purpose. The Statement of Understanding must also specify other terms and conditions of employment as described in paragraph 15.15.5.

15.14.2 The Center must review each determination to pay a bonus with no service agreement at least annually to determine whether payment of the bonus at that amount is still warranted. If applicable, this review must include verification that the position contains competencies meeting a critical Agency need. Based on the results of the review the bonus may be continued, terminated, or modified to reflect any change in circumstances. This determination must be certified in writing by the approving official and maintained in the case file. Documentation is required to demonstrate that the review was conducted and to support action(s) taken.

15.14.3 The Center must notify an employee in writing when it terminates or reduces a retention bonus when no service agreement is required, including notification that the employee is entitled to accrue the retention bonus through the end of the pay period in which the written notification is provided.

15.14.4 The Center must terminate a retention bonus when no service agreement is required if the employee is demoted or separated for cause, the employee receives a rating of record of less than "Fully Successful" (Level 3), or equivalent, or the Center reassigns the employee to a different position.

15.15 Service Agreements

15.15.1 Unless the employee is paid the full percentage of the bonus in biweekly installments, the employee must sign a written service agreement to complete a specified period of employment before the bonus may be paid. NASA Form 1719, Employment Service Agreement — Retention Bonus, has been established for this purpose. When the full percentage of the bonus amount is paid in biweekly installments, no service agreement is required (see section 15.14).

15.15.2 Approving officials will ensure that the service agreement provides for the maximum return on the Agency investment appropriate in the specific circumstances.

15.15.3 Service agreements will be for a period of not less than six months and not more than four years.

15.15.4 The service agreement must include all of the following:

- a. The required period of service, which must be expressed in years and/or whole months, with partial months being rounded to the nearest month.
- b. The method of payment, including payment schedule.
- c. The amount of bonus and basis for calculation.
- d. The salary rate to be used in making installment payments.
- e. The requirement to maintain a rating of record of at least "Fully Successful" (Level 3), or equivalent, during the service period.

f. Conditions under which the agreement may be terminated before the expiration of the service period and the effect of such early termination.

g. Conditions under which the employee would be required to repay a bonus and how the repayment amount will be computed.

15.15.5 In addition to the service requirement in the paragraph above identify the service agreement may specify other terms and conditions of employment (e.g., employee's work, type of position). The service agreement may also address the extent to which periods of time on a detail, in nonpay status, or in paid leave status are creditable towards completing the service period.

15.16 Violation/Termination of Service Agreement

15.16.1 Employees who fail to complete the required service period must repay bonus monies under the conditions specified in the service agreement. Employees may also be required to repay a bonus if they violate any other condition specified in the service agreement.

15.16.2 An employee will not be required to repay a bonus if he/she is involuntarily separated.

15.16.3 Repayment may be waived only when a determination is made that recovery would be against equity and good conscience and not in the best interests of the United States.

15.17 Action Processing

Instructions for processing these actions are contained in the NASA Desk Guide on The NASA Flexibility Act of 2004 (revised February 21, 2006).

15.18 Records and Reporting Requirements

15.18.1 The Center Human Resources Office must establish and maintain documentation for each bonus approved. The documentation must include: the basis for authorizing a retention incentive, documentation of the determination that the employee would be likely to leave the Federal service, the basis for determining the amount of the bonus and the payment schedule, and a copy of the signed service agreement or statement of understanding.

15.18.2 Information on bonuses paid under these provisions is to be provided to the OHCM, as requested, to ensure compliance with the annual Congressional reporting requirements.

15.18.3 Each Center Human Resources Office must, at a minimum, maintain the following data by whether or not the bonus is paid to address a critical need: total amount of bonuses paid; the total number of bonuses paid; the percentage of the amount of bonuses paid to supervisors and management officials; and the average percentage used to calculate the total average bonus amount.

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